

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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LINDA BEEMAN,

No. 2:21-cv-01774 WBS DB

Plaintiff,

v.

ORDER RE: MOTION TO DISMISS  
FIRST AMENDED COMPLAINT

JOHN CRUZ and J. CARDOZA,  
individually and as employees of  
the AMADOR COUNTY SHERIFF'S  
DEPARTMENT; COUNTY OF AMADOR;  
and DOES 1 through 50,  
inclusive,

Defendants.

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This matter is back before the court on defendants'  
motion to dismiss plaintiff's First Amended Complaint. Whereas  
in the original Complaint plaintiff alleged violations of her  
Fourth, Fifth, and Fourteenth Amendment rights, in the First  
Amended Complaint she alleges only violations of her Fourth  
Amendment rights and right to "due process". (First Amended  
Complaint ("FAC") at ¶¶ 30-31 (Docket No. 12).)

1       II. Discussion

2           A. Municipal Liability

3                  The First Amended Complaint names Amador County as a  
4 defendant but appears to assert no claim for municipal liability.  
5 (See id.) In her opposition, plaintiff indicates that she does  
6 not seek to establish municipal liability against the County but  
7 rather seeks to establish supervisory liability against Cardoza.  
8 (Opp. at 8-9 (Docket No. 15).) The court will therefore grant  
9 defendants' motion to dismiss as to the County.

10              B. Unreasonable Execution of Warrant

11                  In its previous Order, the court evaluated whether  
12 plaintiff's complaint stated a claim for unreasonable execution  
13 of warrant, based on allegations detailing damage to plaintiff's  
14 property incurred during execution of two warrants at her home.  
15 (See Order at 5-7 (Docket No. 9).) The court held that this  
16 claim was fatally defective because, although the original  
17 complaint described the damage done to plaintiff's property, it  
18 did not allege which officers caused that damage. (Id. at 6-7  
19 (citing Hydrick v. Hunter, 669 F.3d 937, 942 (9th Cir. 2012))).  
20 However, at oral argument addressing the current motion, counsel  
21 for plaintiff appeared to suggest that he did not believe such a  
22 claim had merit and thus did not in fact intend to pursue it in  
23 the First Amended Complaint.

24                  Moreover, the only new and relevant allegation in  
25 plaintiff's First Amended Complaint is that "Cruz had secured the  
26 warrant and was in charge of the execution of the warrant." (FAC  
27 at ¶ 11.) It does not allege that Cruz, or any other  
28 individual(s), personally caused the damage. (See id.) Although

1 plaintiff argues that Cruz was "the lead officer on execution of  
2 the warrant," (Opp. at 11 (capital typeface omitted)), Cruz's  
3 mere presence during the warrant execution is insufficient, as  
4 there is no vicarious liability under § 1983. See Ashcroft v.  
5 Iqbal, 556 U.S. 662, 676 (2009) ("Because vicarious liability is  
6 inapplicable to . . . § 1983 suits, a plaintiff must plead that  
7 each [ ]official defendant, through the official's own individual  
8 actions, has violated the Constitution."). Because personal  
9 participation must be alleged to state a claim under § 1983, see  
10 id.; Hydrick, 669 F.3d at 942, plaintiff's unreasonable execution  
11 claim must be dismissed.<sup>1</sup>

12       C.     Malicious Prosecution

13               Plaintiff asserts a claim based on the filing of  
14 charges against her, prompted by defendants, which caused her to  
15 spend 13 days in jail. (FAC at ¶¶ 15-18.) In its previous  
16 Order, the court dismissed plaintiff's malicious prosecution  
17 claim on the ground that she failed to allege facts indicating  
18 that defendants overrode the judgment of the District Attorney,  
19 who under Ninth Circuit law is presumed to have independently  
20 determined the existence of probable cause. (Order at 7-8  
21 (quoting Smiddy v. Varney, 803 F.2d 1469, 1471 (9th Cir. 1986));  
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23               <sup>1</sup> In her opposition, plaintiff challenges the notion that  
she must, at the pleading stage, present "evidence of who did  
24 what damage." (See Opp. at 11.) Indeed, plaintiff is not  
required to prove the truth of her claims at this stage; rather,  
25 to survive a motion to dismiss, she need only provide allegations  
of fact that, if true, would demonstrate the merit of her claims.  
26 See Navarro, 250 F.3d at 732; Moss v. U.S. Secret Serv., 572 F.3d  
27 962, 969 (9th Cir. 2009). To do so, she is required to allege  
which individual defendants caused the damage she challenges.  
28 She has not done so here.

1       Beck v. City of Upland, 527 F.3d 853, 862-63 (9th Cir. 2008))).  
2       The court noted that this presumption may be rebutted in  
3       circumstances where, inter alia, "the prosecutor . . . was given  
4       false information" or "the officers otherwise engaged in wrongful  
5       or bad faith conduct that was actively instrumental in causing  
6       the initiation of legal proceedings." (Id. at 8 (quoting Beck,  
7       527 F.3d at 862-63) (internal quotation marks omitted).)

8                  In the First Amended Complaint, plaintiff alleges that  
9       Cruz omitted from his report information suggesting she had  
10      innocent intentions in wiring money to her son. (FAC at ¶ 16.)<sup>2</sup>  
11      She alleges that Cruz presented "false evidence" to the District  
12      Attorney, obscuring this information, leading to the decision to  
13      charge her. (Id. at ¶ 21; see Opp. at 14, 18.)

14                  Even assuming that these allegations standing alone  
15      might be sufficient to rebut the presumption of prosecutorial  
16      independence, plaintiff's claim cannot succeed because, as the  
17      court previously noted, plaintiff and defendants have both  
18      acknowledged that, at a May 10, 2021 preliminary hearing, the  
19      magistrate was told about Anthony Adams' statement to Cruz and  
20      nevertheless ordered plaintiff held over for trial. (Order at  
21      8.) Therefore, omission of this information cannot have caused  
22      plaintiff to be improperly incarcerated for 13 days, as that

24                  2       Specifically, plaintiff alleges that she wired \$200 to  
25      her son, Jerry Adams, to enable him to return to Jackson,  
26      California, to turn himself in to authorities. (FAC at ¶¶ 15-  
27      16.) She alleges that in a report submitted to the District  
28      Attorney, however, Cruz erroneously stated that she had sent  
Adams the money to help Adams avoid apprehension, and that Cruz  
failed to rectify this error after being informed of plaintiff's  
true intentions. (Id. at ¶¶ 13, 15.)

1 information was in fact before the state court when the  
2 magistrate ordered plaintiff's incarceration. See Johnson v.  
3 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (§ 1983 liability  
4 requires causal link between defendant's conduct and alleged  
5 violation of plaintiff's constitutional rights).<sup>3</sup> Because  
6 plaintiff cannot show Cruz caused her to suffer a constitutional  
7 violation, her malicious prosecution claim must be dismissed.<sup>4</sup>

8       D. Supervisory Liability

9                 Plaintiff also seeks to establish that Cardoza is  
10 liable as a supervisor for his role in the alleged violations of  
11 her constitutional rights. (FAC at ¶¶ 11, 15, 17, 23.) "A  
12 supervisory official is liable under § 1983 so long as 'there  
13 exists either (1) his or her personal involvement in the  
14 constitutional deprivation, or (2) a sufficient causal connection  
15 between the supervisor's wrongful conduct and the constitutional  
16 violation.'" Rodriguez v. Cnty. of Los Angeles, 891 F.3d 776,  
17 798 (9th Cir. 2018) (quoting Keates v. Koile, 883 F.3d 1228,  
18 1242-43 (9th Cir. 2018)). The existence of an underlying  
19 constitutional violation is thus a necessary predicate to a  
20 finding of supervisory liability. See id. As explained,

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22                 <sup>3</sup> Plaintiff argues that the magistrate's probable cause  
23 determination at the May 10 preliminary hearing was negated when  
24 the charges against her were dismissed during a subsequent  
25 hearing on June 18, 2021. (See Opp. at 14-17.) Even assuming  
26 this is correct, however, it does not explain how Cruz's conduct  
could have caused plaintiff to be incarcerated during the  
intervening period -- notwithstanding the magistrate's awareness  
of Anthony Adams' statement to Cruz -- as explained above.

27                 <sup>4</sup> Because the court concludes plaintiff's allegations  
28 fail to demonstrate causation, it does not reach the parties'  
arguments regarding issue preclusion.

1 however, the First Amended Complaint fails to state a claim  
2 either for unreasonable execution of warrant or for malicious  
3 prosecution. It thus also necessarily fails to state a claim for  
4 supervisory liability, which must therefore be dismissed.

5       E. Due Process

6                  Finally, the First Amended Complaint includes a lone  
7 allegation that defendants deprived plaintiff of her right to  
8 "due process." (FAC at ¶ 30.) It does not elaborate on how  
9 defendants' actions deprived her of due process, however. Nor  
10 does plaintiff explain this claim in her opposition, to the  
11 extent that she means for it to be distinct from the claims  
12 discussed above, (see Opp.), and counsel for plaintiff did not  
13 address it at oral argument. Because the court is unable to  
14 otherwise identify a basis for this claim, it will be dismissed.  
15 See Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001).

16                  IT IS THEREFORE ORDERED that defendants' motion to  
17 dismiss plaintiff's First Amended Complaint (Docket No. 13-1) be,  
18 and the same hereby is, GRANTED.<sup>5</sup>

19 Dated: April 11, 2022



20                  WILLIAM B. SHUBB  
21                  UNITED STATES DISTRICT JUDGE

22                  5 At oral argument, the parties agreed that, at the May  
23 2021 hearing, the magistrate was aware Cruz had been told that  
24 plaintiff's intentions were innocent when wiring \$200 to her son,  
25 and that the magistrate nonetheless ordered plaintiff to be held  
26 over for trial. Because, as explained above, the magistrate's  
27 informed decision precludes liability for malicious prosecution  
28 against the initiating officers, the court concludes that this  
claim "could not be saved by any amendment." In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005). Because the claim for  
supervisory liability is derivative of the malicious prosecution  
claim, the same is true for it as well. Accordingly, the court  
will not grant further leave to amend. See id.